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IN THE
COURT OF APPEALS OF INDIANA

STATE OF INDIANA,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 66A04-0608-CR-453
	)	
MICHAEL E. KASTEN, JR.,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE PULASKI SUPERIOR COURT
The Honorable Patrick Blankenship, Judge
Cause No. 66D01-0601-CM-9

January 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

The State appeals a reserved question of law subsequent to the acquittal of Michael E. Kasten, Jr.

We reverse.

ISSUE

Whether the trial court erred when it found insufficient corpus delicti to admit Kasten's admission that he was driving his vehicle at the time it crashed into a utility pole.

FACTS

On January 10, 2006, the State charged Kasten with Count I, operating a vehicle while intoxicated endangering a person, a class A misdemeanor; Count II, operating a vehicle with a blood alcohol content of .15, a class A misdemeanor; Count III, operating a vehicle while intoxicated, a class C misdemeanor; and Count IV, operating a vehicle with a blood alcohol content of .08 or more, a class C misdemeanor. A bench trial was held on June 20, 2006, and the following evidence was heard.

J.D. Danford worked for the Pulaski County Highway Garage and needed to be at the Garage for work by 5:00 a.m. on the morning of December 4, 2005. As he "was walking out the door" from the kitchen to go to work, he testified, "the lights went out" and "the power went out." (Tr. 10). Danford had to manually operate his garage door. This was at "4:30 [a.m.], give or take." (Tr. 10-11). It had snowed during the night, and as Danford left his rural home on the county road, he saw "a few snow drifts." (Tr. 11). [A]pproximately three quarters of a mile" from his home, he saw "a pickup in the ditch" and "up against the broken light pole with wires dangling down." (Tr. 12). Danford also

saw his neighbor Kasten on foot, walking, "a couple hundred feet just north of" where the truck was. (Tr. 19). Danford noticed "a little bit of blood on [Kasten's] head." (Tr. 20). Danford "asked him if he was all right, and Kasten "said yeah he was." (Tr. 15). Danford "said is there anyone with you? He said, no." *Id.* Danford asked if he needed any help, and Kasten "said no, he had help coming." *Id.* Danford then "called the Sheriff's Department" and reported "a pick-up in the ditch . . . with power lines down." (Tr. 12).

Mary Wagner, a former girlfriend of Kasten, testified at trial that Kasten had called her at about 2:20 a.m. that morning and asked her to come get him. According to Wagner, she found Kasten between where Kasten's truck lay in the ditch and Kasten's home. Wagner testified that Kasten was bleeding from what appeared to be a cut on his face, and that she took Kasten to his home nearby. Wagner further testified that she and Kasten then talked in her vehicle, in Kasten's driveway, for thirty to forty minutes. Wagner also testified that she was not sure if Kasten had been drinking or had been intoxicated but that she smelled alcohol, and that Kasten had told her that someone else had driven him home earlier. Later, when Kasten went inside his home, she backed out of his driveway and saw a Sheriff's Department car approaching "from the south past the accident scene." (Tr. 30). Wagner testified that this was at "approximately" 4:30 a.m., and she then stopped her vehicle and talked with the deputy, whom she told that Kasten smelled of alcohol. (Tr. 37).

Pulaski County Sheriff's Department Deputy Charles Morehead testified that on December 5, 2005, he was dispatched to the scene at 4:36 a.m. on the report of a motor

vehicle accident. At 4:47, he found Kasten's truck on the side of the roadway "on top of a utility pole" with "wires down in the roadway." (Tr. 40). Because it "appeared that somebody was probably injured in the accident," he began to look for the occupant "to make sure they're okay." (Tr. 41). A car coming toward him stopped, and it was Wagner. Morehead asked her if she saw anybody walking, and Wagner "said that she had received a phone call from her boyfriend Mr. Kasten and she had c[o]me and picked him up and drove him to his house," which she pointed out nearby. (Tr. 42). When Morehead "asked her if he was okay," Wagner "said that he had a cut on his head" and "was bleeding." *Id.* Morehead then asked her "if he had been drinking." *Id.* Morehead testified that Wagner "said that she believed so." *Id.* Morehead proceeded to Kasten's home. He testified that after Kasten "opened the door and invited [him] in," he observed what he believed to be a freshly bleeding cut on Kasten's head and called for medical assistance. (Tr. 43).

Morehead testified that he "asked [Kasten] what happened and he said" -- whereupon defense counsel objected to admission of "any statements" made by Kasten. (Tr. 43, 44). As the basis of his objection, Kasten's counsel argued that the State had failed to establish the corpus delicti, and therefore any statements of admission by Kasten were inadmissible. The trial court sustained the objection, finding insufficient evidence that a crime had been committed to permit testimony about Kasten's admissions in that regard to the deputy.

Subsequently, the State presented evidence of Kasten's intoxication at the time Morehead saw him, and the State rested. Kasten moved for a directed verdict, arguing

there was no evidence that he was driving his truck when it collided with the utility pole. The trial court granted the motion. The State brings this appeal, challenging the trial court's exclusion of Kasten's statements of admission to Deputy Morehead.[1]

DECISION

The State appeals a reserved question of law pursuant to Indiana Code section 35-58-4-2(4) regarding the trial court's ruling on Kasten's motion to exclude evidence of Kasten's statements of admission. Specifically, the State argues that the trial court abused its discretion when it found that the State had failed to present a sufficient corpus delicti to permit the statements. We agree.

When the defendant has been acquitted and the State appeals a reserved question of law, only questions of law are considered by this court. *State v. Lloyd*, 800 N.E.2d 196, 198 (Ind. Ct. App. 2003). The issue addressed is moot, but the purpose of the appeal is to provide guidance to the trial courts in future cases. *Id.*

The decision to admit or exclude evidence is within the trial court's discretion. *Carpenter v. State*, 786 N.E.2d 696, 703 (Ind. 2003). We reverse for an abuse of that discretion, and such an abuse of discretion "occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or it misinterprets the law." *Id.*

[1] According to Deputy Morehead's written report of the events early December 4, 2005, Kasten stated to Morehead that he had "f****ed up . . . was out all night drinking and then . . . got a ride home because [he] was too drunk to drive," but then "decided that he wanted to drive" to Mary Wagner's house, and "on his way to her house . . . he went off the road and hit the utility pole." (App. 9).

The corpus delicti rule reflects "judicial hesitancy to accept without adequate corroboration a defendant's out-of-court confession of criminal activity." *Willoughby v. State*, 552 N.E.2d 462, 466 (Ind. 1990). "The primary function of the rule is to reduce the risk of convicting a defendant based on his confession for a crime that did not occur." *Id.* Thus, the rule requires the State to establish the corpus delicti – a showing of (1) the occurrence of the specific kind of injury and (2) someone's criminal act as the cause of the injury – by independent evidence. *Id.* The independent evidence need not be shown beyond a reasonable doubt nor demonstrate prima facie proof as to each element of the charged offense, but must support an inference that the crime was committed. *Id.* at 467.

Turning to the facts in the present case, in order for Kasten's statements to Morehead to be admissible in his prosecution for the various driving-while-impaired offenses charged, the independent evidence must have established the corpus delicti of his having operated his truck while impaired by alcohol. At the time when the trial court sustained Kasten's objection, the following undisputed facts had been established. The electric power went out at Danford's home at approximately 4:30 a.m. Danford then drove from his home and within ¾ miles, he saw Kasten's truck in the ditch on a broken pole with power lines dangling. Within about 200 feet of the truck, Danford saw his neighbor Kasten – alone, on foot, with a bleeding cut on his face, and with whom he had a brief conversation.

The reasonable inference to be drawn therefrom is that an incident occurred at approximately 4:30 a.m. that knocked out the electrical power to Danford's home and, shortly thereafter, Danford saw Kasten near the scene of a downed power line. Danford

immediately called a report to the Sheriff's office. At approximately 4:36 a.m., Morehead was dispatched to investigate. Morehead found Kasten's truck atop a downed power pole with its wire in the roadway at approximately 4:47 a.m. Morehead "continued northbound" on the road, looking for someone on foot. A reasonable inference would be that Morehead was driving northbound at approximately 4:50 a.m. Wagner testified that after Kasten had called her in the "wee hours of the morning" when she had been asleep and "didn't want to be called," she had picked up Kasten near his truck off the roadway and saw a cut on his face. Wagner further testified that it was "approximately" 4:30 a.m. when she backed out of Kasten's driveway. (Tr. 37). Her estimation of the approximate time supports the reasonable inference that she was merely speculating as to the actual time, which might have been about twenty minutes later, or 4:50 a.m. Further, her testimony that after exiting Kasten's driveway, Wagner saw Morehead's vehicle coming "from the south past the accident scene," and she stopped to talk with him is corroborated by the testimony of Danford and Morehead with respect to the time of the incident. (Tr. 37, 30). Wagner told Morehead that she had taken Kasten home, that he had a bleeding cut on his head, and that he smelled of alcohol. Morehead then proceeded directly to Kasten's house nearby, arriving at perhaps 4:55 a.m., and observed a bleeding cut on Kasten's face and noted signs of intoxication and the odor of alcoholic beverage on him.

Although this evidence would not prove beyond a reasonable doubt that at approximately 4:30 a.m., Kasten was driving the truck and impaired by alcohol at the time when his truck struck the power pole and downed the utility line, this evidence is

sufficient to "support the inference" that Kasten had driven his vehicle causing the accident. *Willoughby*, 552 N.E.2d at 467. Therefore, the trial court abused its discretion when it excluded Kasten's statements to Morehead based upon Kasten's corpus delicti objection.

Reversed.[2]

NAJAM, J., and FRIEDLANDER, J., concur.

[2] Although the exclusion of this evidence was error, Fifth Amendment double jeopardy principles bar a second trial on the charges. *See Lloyd*, 800 N.E.2d at 200 n.3.